

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

**UNITED STATES OF AMERICA,  
PLAINTIFF**

**CASE NO. C-1-02-107  
(SPIEGEL, J.)  
(HOGAN, M.J.)**

**VS.**

**BOARD OF HAMILTON COUNTY  
COMMISSIONERS, ET AL.,  
DEFENDANTS**

**RESOLUTION OF THE CLAIM OF BETTY J. BROWN**

Betty Brown resides in a single-family home located at 6243 Lisbon Ave. in the Cincinnati neighborhood of Pleasant Ridge. On December 30, 2004, Ms. Brown's daughter Linda discovered that the basement of the Lisbon Ave. home had flooded and that there was between 1 and 1.5 feet of standing water. There was a heavy rain which started on the previous day. The home has several down spouts which divert water away from the foundation, but no trees in the front yard. There is, however, a large tree in a neighbor's yard across the street.

Metropolitan Sewer District (MSD) was notified and responded to the premises that same day, inserted a rod or "snake" with a pigtail (root saw) at the end and pumped the water out of the basement. The rodding process indicated that the blockage was caused by tree roots, but the precise location of the roots could not be determined. On the next day, December 31, the MSD crew located the obstruction at approximately 151 feet south of Manhole numbered 42816016, just north of the property in question. On January 5, 2005, the MSD crew poured dye through the lateral line at 6243 Lisbon and the dye appeared at the main line sewer, where the lateral from 6243 Lisbon meets the main line sewer. A closed circuit television camera was inserted in the main line and the picture obtained from the camera showed that the "tap for 6423 is 100% blocked with roots." The roots were removed and the damaged piece of 6" pipe was removed and replaced by Rack Construction. The Court viewed the television tape as it moved through

the main line and was able to see the roots in question before removal. The roots entered the lateral at the tap, the point where the lateral and main sewer lines intersect, at approximately 90 feet from the house. (See Defense Exhibits A-F).

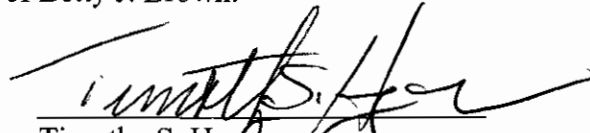
The City of Cincinnati paid for the inspection, cleanup of the basement and the replacement of the damaged pipe, which was in the lateral line at the tap, but refused to pay for damages sustained by Ms. Brown because under Ohio law, the lateral is in the right of way and must be maintained by the connecting homeowner. Had the problem been in the main line, the City would be responsible for the damages sustained by Ms. Brown. For that reason, the City paid little attention to Ms. Brown's claim for damage reimbursement to the tune of \$44,000., a figure completely out of line with the approximate value of the house and lot, considering the fact that the damage was confined to the basement.

Ms. Brown believes that the problem was in the main line because the point where the repair was made was very close to the main line, as could be determined from a visual observation of the site where digging obviously occurred, because she had experienced no previous plumbing backups and because there are no large trees in her front yard. Also supporting her theory is that rain is diverted from her roof by gutters taking the flow away from her foundation. She retained a Howard Hughes, an engineer by education, but who is also a licensed plumber. Mr. Hughes ran a camera through the lateral and the Court also had the opportunity to view the tape, which showed, as Mr. Hughes testified, that the roots, apparently from a neighbor's tree, which appeared along the route were insufficient to cause the blockage and that there appeared to be no root problem at the tap. The camera, however, was inserted after the roots were removed and the pipe repaired.

The fact that the blockage occurred near the junction of the lateral and main lines makes this a somewhat difficult decision. However, after a review of all the proof and the opportunity to reflect, the Court is convinced that Defendants should prevail for two reasons: (1) The MSD investigation was thoroughly and competently accomplished and it showed that the blockage occurred at the tap, for which the homeowner is responsible. (2) Rack Construction replaced approximately 5 feet of lateral pipe with 6"SDR-35, which is PCV pipe. (See Defendant's Exhibit C). Jerome Weiner of MSD testified that the main line is constructed of clay pipe with a resin liner, while the lateral is constructed of PVC pipe.

Defendants should prevail on the claim of Betty J. Brown.

November 30, 2007



Timothy S. Hogan  
United States Magistrate Judge